

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DELORES BERDAT, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 04cv2555
	§	
INVESCO FUNDS GROUP, INC., et al.,	§	
	§	
Defendants.	§	
	§	
	§	
FERDINANDO PAPIA, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
AIM ADVISORS, INC., et al.,	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER

Plaintiffs in these two proceedings seek recovery under the Investment Company Act of 1940 (“the ICA”). In *Berdatt*, five different security holders have sued eight separate INVESCO Funds. In *Papia*, ten different security holders have sued ten different AIM Funds.

Defendants in each case have filed a Motion for Judgment pursuant to Federal Rule of Civil Procedure 12(c). Defendants assert that Plaintiffs’ claims under the ICA for excessive advisory and distribution fees fail to contain any factual allegations as to any particular fund. That is, Plaintiffs do not allege that any particular fund has charged fees that are disproportionate to the services rendered by that particular fund.


Plaintiffs respond that Defendants have mischaracterized the allegations of the Complaints, and that Defendants wish to hold Plaintiffs to a higher pleading standard than is

required. Plaintiffs further note that the information that Defendants allege to be lacking from the Complaints is in Defendants' sole control.

At this preliminary phase, the Court concludes that Plaintiffs should be allowed to replead in each case. The Amended Complaints should attempt to particularize Plaintiffs' allegations of excessive fees to each individual Defendant. Plaintiffs will be allowed until August 22, 2005 to file Amended Complaints. To the extent that Plaintiffs believe they are unable to comply with this Order because the necessary information is in the sole possession of Defendants, Plaintiffs shall specify the information they believe Defendants should produce.

IT IS SO ORDERED.

SIGNED this 28th day of July, 2005.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", is written above a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS
ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY
AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN
SENT ONE BY THE COURT.**